IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1682 of 1989

with

CRIMINAL MISC.APPLICATION No 4026 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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VIRENDRA PRATAPRAI MEHTA

Versus

SHASHIKANT GIRDHARLAL VORA

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Appearance:

1. Criminal Misc.Application No. 1682 of 1989

MR SUNIL K SHAH for Petitioner No. 1-5

MR SURESH M SHAH for Respondent No. 1

MR MEHUL S SHAH for Respondent No. 1

MR KODEKAR, APP for Respondent No. 2

2. Criminal Misc.Application No. 4026 of 1991

MR SUNIL K SHAH for Petitioner No. 1

MR SURESH M SHAH for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/09/2003

COMMON ORAL JUDGEMENT

#. The present petitions have been filed by the petitioners under Section 482 of the Code of Criminal Procedure, 1973 wherein they have prayed for quashing the complaint in question, which has been annexed by the petitioners with these petitions.

#. A complaint was filed by the respondent complainant against the petitioner directly into the court of the learned Chief Judicial Magistrate, Junagadh on 28.6.1989 for the offence punishable under Sections 499, 500, 120-B, 34 and 114 of IPC. After recording the verification of the complainant, learned Chief Judicial Magistrate, Junagadh issued the process against the present petitioners. The said complaint was registered as Criminal Case No.9514 of 1989.

#. Being aggrieved and dissatisfied against the order passed by the learned Chief Judicial Magistrate, the present petitions have been filed into this Court. When these matters came up for hearing before this Court (Coram: B.S.Kapadia,J, as he then was) on 1.8.1989, the Court passed the following order in Criminal Misc. Application No.1682 of 1989.:

"Mr.B.C.Patel, learned Advocate for the petitioners seeks permission to withdraw the application on behalf of Virendra Prataprai Mehta and, therefore, he is permitted to withdraw the application qua Virendra Prataprai Mehta.

Rule in respect of the petition for the rest of the petitioners returnable on 28th August, 1989. Ad-interim relief in terms of para 15 to stay the proceedings of Cri.Case No.9514/89 pending in the court of Chief Judicial Magistrate at Junagadh in respect of the petitioners Nos.2 to 5 i.e. Tansukhrai Prataprai Mehta, Bipinkumar Prataprai Mehta, Hitendra Prataprai Mehta and Prataprai Maneklal Mehta till further orders."

Vide aforesaid order, the Court permitted to withdraw the said petition qua Virendra Prataprai Mehta, i.e. petitioner No.1, and, therefore, this petition is required to be proceeded only qua petitioner nos. 2 to 5.

#. Before I proceed with the matter, it is required to be mentioned here that though the petition has been withdrawn qua present petitioner No.1 of Criminal Misc. Application No.1682 of 1989 on 1.8.1989, he, later on, in the year 1991 filed the second petition, which has been registered as Criminal Misc. Application No.4026 of 1991 wherein interim relief was granted by this Court (Coram: K.J.Vaidya,J (as he then was)) vide order dated 4.12.1991 and both these matters are awaiting for final disposal till this date.

#. It reflects that prior to this date, these petitions have been listed in the court of the then Honourable Chief Justice and, the same could not be disposed of, and, therefore, ultimately, the same have been listed before this Court today.

#. I have heard the learned counsel for the respective parties. With the consent of the parties, both these matters are taken up for final hearing today and are being disposed of by this common judgment.

#. The main contention, which has been raised by the learned counsel for the petitioners, is that the complaint in question is civil in nature and has been filed for the purpose of settling the civil dispute pending between the parties since long. It has been argued that one criminal complaint has been filed by the present petitioners into the court of learned Metropolitan Magistrate at Kurla, Mumbai and the complaint in question are of similar nature. It has been further argued that since the petition filed by the present petitioners into the Bombay High Court by way of Criminal Application No.1680 of 1989 against issuance of process in the complaint filed at Kurla, Mumbai, has been finally disposed of by the Bombay High Court by quashing the complaint vide order dated 6.6.1990, the present complaint is also required to be quashed only on that ground. It has been further argued that the petitioner of Criminal Misc. Application No.4026 of 1991 is entitled to file the second petition as there is no bar in doing the same though the earlier petition has been withdrawn qua him.

#. On the other hand, learned counsel for the respondent complainant has mainly argued that, while deciding the matter under Section 482 of the Code, what is required to be seen by the Court is, whether the complaint in question discloses prima facie ingredients of the offence in question. If answer is yes, then the complaint cannot be quashed and if no, the complaint is required to be

tried and decided by the court below. It has been further argued that the complaint filed by the petitioners into the court of the learned Metropolitan Magistrate, Kurla at Mumbai is different and has nothing to do with the present complaint. It has been further argued that the Bombay High Court has quashed the complaint filed before the Court at Kurla on the basis of complaint filed therein and while doing so, nothing has been reflected in the judgement qua the present complaint. It is also argued that while filing the petition before the Bombay High Court, the fact of filing the present petition, being Criminal Misc. Application No.1682 of 1989, into this Court has been suppressed, and, therefore, above judgment will not come in rescue of the present petitioners. Since the complaint and his statement disclose prima facie ingredients of the offence in question, it is prayed that the complaint in question may not be quashed.

#. I entirely agree with the arguments advanced by the learned counsel for the respondent - complainant. On going through the complaint and the statement recorded by the learned Chief Judicial Magistrate, Junagadh on 28.6.1989 on oath, I am of the opinion that the ingredients of the offence in question have been prima facie established, and, therefore, the complaint cannot be quashed. Over and above, I have also gone through the judgment delivered by the Bombay High Court, which has been shown to me by the learned counsel for the petitioners as also the complaint in question. It appears that, both are different litigations, and, therefore, it cannot be looked into for the purpose of deciding the complaint in question. Over and above, the basic material of having filed the petition before this Court has been suppressed by the present petitioners while filing of the petition into the Bombay High Court. Since the complaint in question discloses the prima facie ingredients of the offence in question, these petitions are required to be rejected.

##. Both these petitions are accordingly rejected. Rule is discharged. Interim relief granted earlier stands vacated forthwith. The trial court is directed to proceed with the matters forthwith.

##. After the aforesaid judgment was dictated, the learned counsel for the petitioners has requested that since the interim relief remained continued for a period of 14 years, the same may be extended for some more time. However, looking to the facts and circumstances, the request is rejected.

(R.P.Dholakia,J)

(pathan)